

AMENDED IN SENATE MARCH 19, 2007

SENATE BILL

No. 105

Introduced by Senator Migden

January 17, 2007

An act to amend Section ~~18521~~ 17021.7 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 105, as amended, Migden. ~~Taxation-~~ *Taxation: registered domestic partners.*

The Personal Income Tax Law imposes ~~tax~~ taxes on taxable income and ~~provides, among other things, that specified definitions govern the construction of that law.~~ Existing law ~~allows~~ *treats* married couples and registered domestic partners ~~to file joint or separate state tax returns, as specified~~ *the same in determining ownership of business interests and stock shares.* Under existing franchise and income tax laws and the Corporation Tax Law, the marital status of a person is considered in determining the ownership of business interests and stock shares. The Katz-Harris Taxpayers' Bill of Rights provides taxpayers with specified protections for purposes of, among other things, determining their correct tax liability, and includes a release from a levy upon a finding that the levy threatens the health or welfare of the taxpayer or the taxpayer's spouse.

This bill would ~~make technical, nonsubstantive changes to this provision~~ *provide that a domestic partner or former domestic partner be treated as the spouse or former spouse of that taxpayer for purposes of applying the Personal Income Tax Law, specified franchise and income tax laws, the Corporation Tax Law, and the Katz-Harris Taxpayer's Bill of Rights Act, except where that treatment would result*

in the classification of a business entity under those laws that would be different than the classification of that entity for federal income tax purposes, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 17021.7 of the Revenue and Taxation*
2 *Code is amended to read:*

3 17021.7. (a) (1) For purposes of this part, the domestic partner
4 of the taxpayer shall be treated as the spouse of the taxpayer for
5 purposes of applying only Sections 105(b), 106(a), 162(l), 162(n),
6 and 213(a) of the Internal Revenue Code and for purposes of
7 determining whether an individual is the taxpayer's "dependent"
8 or "member of their family" as these terms are used in those
9 sections.

10 (2) *This subdivision shall apply to each taxable year beginning*
11 *on or after January 1, 2002.*

12 (b) (1) *Except as otherwise provided, the domestic partner or*
13 *former domestic partner of a taxpayer shall be treated as the*
14 *spouse or former spouse of that taxpayer for purposes of applying*
15 *provisions of this part, Part 10.2 (commencing with Section 18401),*
16 *Part 10.7 (commencing with Section 21001), and Part 11*
17 *(commencing with Section 23001), and for purposes of applying*
18 *provisions of the Internal Revenue Code that are applicable for*
19 *purposes of this part, Part 10.2, Part 10.7, or Part 11.*

20 (2) *A domestic partner shall not be treated as the spouse of a*
21 *taxpayer if the treatment required by paragraph (1) would result*
22 *in the classification of a business entity for purposes of this part,*
23 *Part 10.2, or Part 11 that would be different than the classification*
24 *of that business entity for federal income tax purposes.*

25 (3) *The amendments made by the act adding this subdivision*
26 *shall be operative for each taxable year beginning on or after*
27 *January 1, 2007.*

28 ~~(b)~~

29 (c) For purposes of this section, the term "domestic partner"
30 means an individual partner in a domestic partner relationship
31 within the meaning of Section 297 of the Family Code.

1 *SEC. 2. This act provides for a tax levy within the meaning of*
2 *Article IV of the Constitution and shall go into immediate effect.*

3 ~~SECTION 1. Section 18521 of the Revenue and Taxation Code~~
4 ~~is amended to read:~~

5 ~~18521. (a) (1) Except as otherwise provided in this section,~~
6 ~~an individual shall use the same filing status that he or she used~~
7 ~~on his or her federal income tax return filed for the same taxable~~
8 ~~year.~~

9 ~~(2) If the Franchise Tax Board determines that the filing status~~
10 ~~used on the taxpayer's federal income tax return was incorrect,~~
11 ~~the Franchise Tax Board may, pursuant to Section 19033 (relating~~
12 ~~to deficiency assessments), revise the return to reflect a correct~~
13 ~~filing status.~~

14 ~~(3) If either spouse or domestic partner was a nonresident for~~
15 ~~any portion of the taxable year, and the couple files a joint federal~~
16 ~~income tax return, the spouses or domestic partners shall be~~
17 ~~required to file a joint nonresident return.~~

18 ~~(b) In the case of an individual who is not required to file a~~
19 ~~federal income tax return for the taxable year, that individual may~~
20 ~~use any filing status on the return required under this part that he~~
21 ~~or she would be eligible to use on a federal income tax return for~~
22 ~~the same taxable year if a federal income tax return was required.~~

23 ~~(c) Notwithstanding subdivision (a), spouses and registered~~
24 ~~domestic partners, as described in Section 297 of the Family Code,~~
25 ~~who are registered as domestic partners as of the close of the~~
26 ~~taxable year, may file separate returns under this part if either~~
27 ~~spouse or registered domestic partner was either of the following~~
28 ~~during the taxable year:~~

29 ~~(1) An active member of the Armed Forces or any auxiliary~~
30 ~~branch thereof.~~

31 ~~(2) A nonresident for the entire taxable year who had no income~~
32 ~~from a California source.~~

33 ~~(d) Notwithstanding subdivision (a), registered domestic~~
34 ~~partners, as described in Section 297 of the Family Code, who are~~
35 ~~registered as domestic partners as of the close of the taxable year~~
36 ~~and who are prohibited under federal law from filing a joint federal~~
37 ~~income tax return, shall either file a joint state income tax return~~
38 ~~or separate state income tax returns by applying the standards~~
39 ~~applicable to spouses who file separately pursuant to Section 6013~~
40 ~~of the Internal Revenue Code. A separate return filed by a domestic~~

1 partner of a registered domestic partnership shall be subject to the
2 same conditions and limitations applicable to the separate return
3 of a spouse.

4 (e) Except for taxpayers described in subdivision (c), for any
5 taxable year with respect to which a joint return has been filed, a
6 separate return shall not be made by either spouse or domestic
7 partner after the period for either to file a separate return has
8 expired.

9 (f) No joint return shall be made if the spouses or the domestic
10 partners have different taxable years; except that if their taxable
11 years begin on the same day and end on different days because of
12 the death of either or both, then a joint return may be made with
13 respect to the taxable year of each. The above exception shall not
14 apply if the surviving spouse remarries or the surviving domestic
15 partner enters into a new domestic partnership before the close of
16 his or her taxable year, or if the taxable year of either spouse or
17 domestic partner is a fractional part of a year under Section 443(a)
18 of the Internal Revenue Code.

19 (g) In the case of the death of one spouse or domestic partner
20 or both spouses or both domestic partners the joint return with
21 respect to the decedent may be made only by the decedent's
22 executor or administrator; except that, in the case of the death of
23 one spouse or domestic partner, the joint return may be made by
24 the surviving spouse or surviving domestic partner with respect
25 to both that spouse or domestic partner and the decedent if no
26 return for the taxable year has been made by the decedent, no
27 executor or administrator has been appointed, and no executor or
28 administrator is appointed before the last day prescribed by law
29 for filing the return of the surviving spouse or surviving domestic
30 partner. If an executor or administrator of the decedent is appointed
31 after the making of the joint return by the surviving spouse or
32 surviving domestic partner, the executor or administrator may
33 disaffirm the joint return by making, within one year after the last
34 day prescribed by law for filing the return of the surviving spouse
35 or surviving domestic partner, a separate return for the taxable
36 year of the decedent with respect to which the joint return was
37 made, in which case the return made by the survivor shall constitute
38 his or her separate return.

O